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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11

12 JUSTIN CODY HARPER,

13 Plaintiff,

14 v.

15 CITY OF REDLANDS, REDLANDS
16 POLICE DEPARTMENT, POLICE
17 OFFICER KOAHOU, and DOES 1
18 through 10, inclusive,

19 Defendants.
20

Case No.: 5:23-CV-00695-SSS (KK)

Judge: Hon. Sunshine S. Sykes

**DEFENDANTS' REPLY IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT AND/OR PARTIAL
SUMMARY JUDGMENT OF ISSUES;
MEMORANDUM OF POINTS AND
AUTHORITIES**

Date: February 28, 2025
Time: 2:00 p.m.
Ctrm: 2

21 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

22 Defendants CITY OF REDLANDS and OFFICER KOAHOU hereby submit
23 this Reply in Support of their Motion for Summary Judgment and/or Partial
24 Summary Judgment of Issues. As set forth herein, Defendants submit that Plaintiff
25 has failed to carry his burden of demonstrating an triable issue of material fact and,
26 accordingly, summary judgment should be granted.

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MEMORANDUM OF POINTS AND AUTHORITIES

1. INTRODUCTION

The gravamen of Harper’s Opposition to the Motion for Summary Judgment is that triable issues of fact exist which preclude summary judgment. Specifically, Harper downplays the undisputed facts that he had smoked methamphetamine, had an extensive criminal record, was involved in a prior hit-and-run accident, had committed felony evading, and had committed a violent carjacking. Instead, Harper insists that it was the arresting officer who “escalated” the situation and that the officer wasn’t truly in danger when he attempted to flee the scene and the officer’s arm was trapped.

There is one problem with this claim: it is utterly discredited by the [belt-worn audio](#) recorder and a [bystander video](#) and, therefore, should be disregarded pursuant to *Scott v. Harris*, 550 U.S. 372, 380 (2007). Indeed, in his Opposition, Harper impermissibly suggests that this Court re-interpret the facts of this case in his favor rather than as demonstrated in the audio and video evidence. This Court should reject this improper invitation.

Harper also suggests that this case should be allowed to proceed to trial because regardless of whether the use of force was constitutionally permissible, it was contrary to his training and other actions *could have been* taken. Again, this assertion is contrary to the law. *Hughes v. Kisela*, 841 F.3d 1081, 1085 (9th Cir. 2016) (Officers need not employ the least intrusive means so long as they act within a range of reasonable conduct).

The simple truth in this case is that Harper was a violent and dangerous man who was a threat to his earlier victims in this case, the community in general, and Officer Koahou in particular. Officer Koahou’s actions were both reasonable and necessary under the totality of the circumstances and, moreover, were subject to qualified immunity.

1 Finally, Harper's derivative state law claims also fail both on the merits and
2 based on numerous statutory immunities set forth in the California *Government*
3 *Code*. And, to the extent this Court concludes that Harper has failed to carry his
4 burden with respect to the federal claims but an issue of fact exists with respect to
5 a state claim, this Court should decline to exercise supplemental jurisdiction over
6 these claims and remand them to state court. *Satey v. JPMorgan*, 521 F.3d 1087,
7 1091 (9th Cir. 2008) (where all federal claims are eliminated before trial, a district
8 court should decline to exercise jurisdiction over the remaining state law claims);
9 see also *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 351 (1988).

10 **2. THE NATURE OF THE FACTUAL RECORD**

11 **Defendants' Undisputed Facts Support Summary Judgment**

12 In support of their motion for summary judgment, Defendants submitted a
13 mere 43 undisputed facts. Inasmuch as these facts were largely taken directly from
14 the deposition of Plaintiff or from the [belt-worn audio](#) and [bystander video](#), Harper
15 for the most part either admitted these facts or asserted strange relevance
16 objections (does Harper *really* assert that being under the influence of
17 methamphetamine is *irrelevant* to explain his actions?).

18 In addition, Harper attempts to create a dispute not as to the actions but as to
19 the *reasons* for the actions (i.e., he did not exit the vehicle *because he was afraid*,
20 or he only drove off *because he was tasered*). However, these do not constitute
21 issues of fact regarding Defendant's statements: he did not exit his vehicle and he
22 did drive off while engaged with the officers.

23 Harper also attempts to create a triable issue of fact by arguing that Officer
24 Koahou's actions deviated from policy manuals (i.e., officers should *avoid* tasing
25 individuals). However, the deviation from a policy manual does not provide the
26 basis for a civil rights violation; rather, the question is whether the force used
27 reasonable under the totality of the circumstances. *Graham v. Connor*, 490 U.S.
28 386, 394-396 (1989).

Plaintiff's Additional Facts Do Not Preclude Summary Judgment

In an attempt to stave off summary judgment, Harper also sets forth approximately 60 additional facts. Harper's Additional Facts Nos. 44-83, 94-95, 97-98, and 100-105, are taken directly from the testimony of the percipient witnesses and, to the extent they are supported by admissible evidence, Defendants do not dispute them for the purposes of this motion.

However, Harper's Additional Facts Nos. 84-93, 96, and 99, are all taken directly from the testimony of an expert witnesses who has opined about the alleged deviation of Officer Koahou's actions from police training standards. And again, whether Officer Koahou *could have* done something different is not the dispositive issue; the question is whether the force used reasonable under the totality of the circumstances. *Graham v. Connor*, 490 U.S. at 394-396.

In sum, there is no factual dispute in this case which preclude a grant of summary judgment: Harper had smoked methamphetamine, had an extensive criminal record, was involved in a prior hit-and-run accident, had committed felony evading, and had committed a violent carjacking. Officer Koahou used deadly forced only when his prior attempts to use lesser force proved ineffective on the methamphetamine-using Harper and after a warning. Finally, Harper's actions and the actions of Officer Koahou are captured on the [belt-worn audio](#) recorder and the [bystander video](#), rendering them undisputed pursuant to *Scott v. Harris*, 550 U.S. at 380. Summary judgment, therefore, should be granted.

3. NO GENUINE ISSUE OF FACT EXISTS WITH RESPECT TO PLAINTIFF'S CLAIM FOR EXCESSIVE FORCE

In his Opposition, Harper argues that he did not pose an immediate threat of death or serious bodily injury at the time Officer Harper used forced. This statement is contrary to the evidence in this case.

Here, the facts demonstrate that Harper was driving a stolen truck, had attempted to evade arrest by driving at speeds of 85 to 90 mph, failed to stop at a

1 stop sign, and was engaged in a hit-and-run accident. U.F. 5-7. When the stolen
2 truck was damaged to the point that it could not longer be driven, Harper
3 abandoned it and carjacked another individual. U.F. 9-10, 14-17. When Harper
4 later refused multiple lawful order to exit the vehicle and a Taser was eventually
5 deployed. U.F. 25. However, once again, rather than complying, Harper
6 attempted to leave the scene, causing Officer Koahou to yell, “Don’t do it! Don’t
7 do it! I’ll shoot you! Stop! Stop!” U.F. 28; see also [Belt-Worn Audio](#) at 4:50-
8 4:54; [Bystander Video](#) at 0:09-0:14. After the car started moving, and with his arm
9 trapped, Officer Koahou fired two defensive shots. U.F. 29-32; see also [Bystander](#)
10 [Video](#) at 0:09-0:14. These shots were fired because Officer Koahou was facing an
11 imminent threat of being struck and/or crushed by the vehicle and was attempting
12 to stop the threat. U.F. 35.

13 These facts demonstrate that the fear Officer Koahou was facing was
14 justified, attempts at the use of lesser force had proven ineffective, and prior
15 warnings had been given.

16 In addition, Harper’s attempt to argue that the fleeing felon doctrine is
17 inapplicable is wholly without merit. In *Plumhoff v. Rickard*, 572 U.S. 765 (2014),
18 the United States Supreme Court addressed a situation in which a driver sped away
19 from a traffic stop and a high-speed pursuit ensued. The pursuit came to a
20 temporary halt when Rickard spun out into a parking lot, resumed maneuvering his
21 car, and as he continued to use the accelerator even though his bumper was flush
22 against a patrol car, an officer fired three shots into the car. Rickard managed to
23 get away, almost hitting an officer in the process, and then officers fired 12 more
24 shots as Rickard fled, fatally wounding him and his passenger. Applying *Graham*
25 *v. Connor*, the *Plumhoff* court concluded that the officers’ conduct did not violate
26 the Fourth Amendment under the totality of the circumstances from the perspective
27 of a reasonable officer on scene. *Plumhoff*, 572 U.S. at 766.

1 As stated above, Harper had already engaged in driving a stolen vehicle,
2 felony evading, and carjacking. U.F. 5-7, 14-17. These actions were clearly
3 felonious. To argue otherwise defies credulity. Moreover, Harper’s reliance on
4 out-of-circuit cases which pre-date *Plumhoff* – such as *Lyle v. Bexar Cnty., Tx.*,
5 560 F.3d 404, 417 (9th Cir. 2009), *Kirby v. Duva*, 530 F.3d 475, 484 (6th Cir. 2008),
6 and *Medina v. Cram*, 252 F.3d 1124, 1132 (10th Cir. 2001) – is both unconvincing
7 and unavailing. See Opposition at 16.¹

8 Indeed, given Harper’s repeated attempts to evade arrest this day – as well as
9 his prior conviction for felony evading, an action which shows a pattern and
10 practice pursuant to Federal Rules of Evidence 406 – the fact that Harper might
11 attempt to continue to evade arrest if not stopped is not just a possibility, it was an
12 absolute certainty. Similarly, Harper was an experienced criminal offender and
13 readily would have understood his sentencing exposure for his actions. Under
14 Rule 404, his past convictions are relevant on the issue of notice, lack of mistake,
15 and showing his state of mind and his commitment to trying to get away without
16 regard to potential harm to others.

17 Here, the danger to Officer Koahou was even more immediate than the
18 danger justifying deadly force in *Plumhoff*. In *Plumhoff*, in the seconds before the
19 first shots were fired, Rickard was accelerating but pushed against a police cruiser.
20 *Id.* Then, “at the moment [the second volley of] shots were fired....Rickard was
21 intent on resuming his flight and that, if he was allowed to do so, he would once
22 again pose a deadly threat for others on the road.” *Id.* at 777. In other words, the
23 mere possibility of that deadly threat to the public posed by Rickard permitted the
24 use of deadly force.

25 Here, Officer Koahou had only a split second to make a decision regarding
26 the use of force as Harper was accelerating and while he was in a vulnerable

27 ¹ For clarification, this page number refers to the pagination on the PDF version of
28 Plaintiff’s Opposition filed via ECF rather than the non-sequentially numbered
pages in the footer of Harper’s Opposition.

1 position. The threat to his life was significant as he was off balance and nearly
2 fell, which could have resulted in him falling under the wheels of the vehicle.
3 [Bystander Video at 0:09-0:14](#). Under these facts, the use of force was reasonable
4 under the totality of the circumstances. *Graham v. Connor*, 490 U.S. at 394-396.

5 **4. DEFENDANTS ARE ENTITLED TO QUALIFIED IMMUNITY**

6 Turning to the issue of qualified immunity, Harper asserts that issues of fact
7 exist which preclude the proper application of this doctrine. As was the case with
8 the issue of the reasonableness of force, this is not accurate.

9 As stated above, Defendants have accepted Harper's version of the facts to
10 the extent they are supported by admissible evidence. And what exactly are these
11 facts? There is no dispute regarding his methamphetamine use, the fact that he was
12 driving a stolen vehicle, that he was engaged in a hit-and-run accident, or that he
13 carjacked a second vehicle. Likewise, there is no dispute regarding the
14 authenticity of either the [Belt-Worn Audio](#) or the [Bystander Video](#). Finally,
15 Harper does not dispute that the vehicle was moving at the time the shots were
16 fired; he claims merely that this was done because he had been tasered. However,
17 even if true, this is exactly the type of reasonable mistake of fact which qualified
18 immunity is designed to immunize. *Harlow v. Fitzgerald*, 457 U.S. 800, 818
19 (1982) (qualified immunity protects government officials from suit under federal
20 law claims if "their conduct does not violate clearly established statutory or
21 constitutional rights of which a reasonable person would have known"; *Pearson v.*
22 *Callahan*, 555 U.S. 223, 230 (2009) (qualified immunity applies regardless of
23 whether the government official's error is a mistake of law, a mistake of fact, or a
24 mistake based on mixed questions of law and fact).

25 Under this doctrine, if a government official's mistake as to what the law
26 requires is reasonable, the government official is entitled to qualified immunity.
27 *Davis v. Scherer*, 468 U.S. 183, 205 (1984). Qualified immunity gives officer
28 "breathing room" to make reasonable but mistaken judgments about open legal

1 questions. *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011). Moreover, this doctrine
2 is sweeping in scope and designed to protect “all but the plainly incompetent or
3 those who knowingly violate the law.” *Malley v. Briggs*, 475 U.S. 335, 341
4 (1986).

5 As discussed at length above, Harper suffered no constitutional violation of
6 any sort. However, assuming arguendo this Court were to find that a constitutional
7 violation *had* occurred, Officer Koahou would nonetheless be entitled to summary
8 judgment on the grounds of qualified immunity because the rights alleged by
9 Harper were anything but clearly established at the time of the incident. In fact, not
10 only is there a lack of law prohibiting Officer Koahua’s conduct, but there are also
11 a significant number of cases *supporting* and authorizing Officer Koahou’s
12 conduct.

13 Indeed, given that *Plumhoff*, *Monzon*, *Williams* and *Vasquez* are all
14 extremely factually similar to the situation faced by Officer Koahou, one simply
15 cannot stay that contrary law was clearly established. Since there are no cases that
16 hold that officers cannot fire upon a felon when the officer is in fear for his safety
17 due to becoming entangled with the suspect who is attempting to drive away,
18 Defendants are entitled to summary judgment.

19 **5. PLAINTIFF’S STATE LAW CLAIMS**

20 Defendants are also entitled to summary judgment on Harper’s derivative
21 state law claims for battery and a violation of the Bane Act because the quantum of
22 force used was reasonable under the totality of the circumstances. *Brown v.*
23 *Ransweiler*, 171 Cal.App.4th 516, 526-528 (2009) (to prevail on a battery claim
24 against a peace officer, a plaintiff must prove the officer used unreasonable force);
25 *Edson v. City of Anaheim*, 63 Cal.App.4th 1269, 1272 (1998) (same).

26 Moreover, although the doctrine of qualified immunity does not extend to
27 state law claims, the federal courts have recognized that the California statutory
28 scheme provides no less protection. *Jones v. Cnty. of Los Angeles*, 2009 U.S. Dist.

1 LEXIS 110900, *16-18 (CD CA 2009) (immunizing against claims for violation of
2 *Civil Code* § 52.1, battery, negligence, and intentional infliction of emotional
3 distress); *Johnson v. City of Pacifica*, 4 Cal.App.3d 82, 86-87 (1970); *Johnson v.*
4 *Contra Costa*, 2010 U.S. Dist. LEXIS 92020, *52-54 (ND CA 2010) (immunizing
5 against claims for negligence); *Miller v. Hoagland*, 247 Cal.App.2d 57, 62 (1966)
6 (immunizing against intentional torts); *Price v. County of San Diego*, 990 F.Supp.
7 1230, 1244 (SD CA 1998) (officer entitled to immunity where force used not
8 unreasonable).

9 .Finally, to the extent that this Court believes that an issue of fact exists with
10 respect to the negligence claims despite Harper's failure to establish a valid claim
11 under 42 U.S.C. § 1983, this Court should decline to exercise supplemental
12 jurisdiction and remand this single claim to state court. *Satey v. JPMorgan*, 521
13 F.3d at 1091; *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. at 351.

14 **5. CONCLUSION**

15 Based on the foregoing, the Court should grant Defendants' Motion for
16 Summary Judgment and/or Partial Summary Judgment and enter judgment in their
17 favor and against Plaintiff Justin Harper. And, to the extent that this Court
18 concludes that Defendants are entitled to summary judgment on Harper's sole
19 federal claim for excessive force, it should remand any surviving state law claims
20 to state court. *Satey v. JPMorgan*, 521 F.3d at 1091; *Carnegie-Mellon Univ. v.*
21 *Cohill*, 484 U.S. at 351.

22 Dated: January 31, 2025

JONES MAYER

23 By: /s/ Scott Wm. Davenport

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for CITY OF REDLANDS and OFFICER KOAHOU, certifies that this brief contains 3.085 words, which complies with the word limit of Local Rule 11-6.1.

Dated: January 31, 2025

JONES MAYER

/s/ Scott Wm. Davenport

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